

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

11.1 ACRES OF LAND, MORE OR LESS,
SITUATE IN STARR COUNTY, STATE
OF TEXAS; AND THE CITY OF RIO
GRANDE CITY, TEXAS, ET AL.,

Defendants.

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CASE NO. 7:20-CV-416

JOINT DISCOVERY/CASE MANAGEMENT PLAN UNDER FRCP 26(f)

- 1. State when and in what manner the parties conferred as required by Rule 26(f), and identify the counsel and/or parties who participated in the conference.**

Pursuant to Fed. R. Civ. P. 26(f), Assistant United States Attorneys N. Joseph Unruh and Chanmealea Thou, counsel for the United States, and Victor Flores and Jose “Pepe” Garza, counsel for Rio Grande City, conferred via email on April 15, 2021.

- 2. State whether each party represents that it has made the initial disclosures required by FRCP 26(a). If not, describe the arrangements that have been made to complete such disclosures.**

The United States will provide initial disclosures based on plans prior to the Proclamation issued by President Biden on January 20, 2021 (“Proclamation”)¹ pursuant to Rule 26(a)(1)(A) prior to the Initial Pretrial and Scheduling Conference set for April 27, 2021.

- 3. List by case number and court any cases related to this one that are pending in any state or federal court and describe how they are related.**

None at this time.

- 4. Briefly describe what this case is about.**

This is a civil action brought by the United States of America under the power of eminent domain through a Declaration of Taking at the request of the Secretary of the Department

¹ Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

of Homeland Security, through the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, for the taking of property, and for determination and award of just compensation to the owners and parties in interest.

5. Specify the allegation of federal jurisdiction.

Plaintiff alleges the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1358.

6. Name the parties who disagree with the jurisdictional allegations and state their reasons.

None.

7. List anticipated additional parties that should be included, when they can be added, and by which parties desires their inclusion.

None.

8. List anticipated interventions.

None.

9. Describe any class-action issues.

None.

10. Describe the discovery plan proposed by the parties, including:

A. What changes should be made in the timing, form or requirement for disclosures under Rule 26(a)?

None.

B. When and to whom the plaintiff anticipates it may send interrogatories?

In the event discovery is needed and should plans for use of the property continue as stated in Schedule B of the Declaration of Taking, the United States anticipates sending interrogatories to Defendant within 60 days after the entry of the Court's scheduling order.

C. When and to whom the defendant anticipates it may send interrogatories?

In the event discovery is needed and should plans for use of the property continue as stated in Schedule B of the Declaration of Taking, Rio Grande City anticipates sending interrogatories to Plaintiff within 60 days after the entry of the Court's scheduling order.

D. Of whom and by when the plaintiff anticipates taking oral depositions?

In the event discovery is needed and should plans for use of the property continue as stated in Schedule B of the Declaration of Taking, the United States anticipates taking the oral deposition of Defendant's representatives and other relevant witnesses prior to the end of the discovery period as designated by the Court.

E. Of whom and by when the defendant anticipates taking oral depositions?

In the event discovery is needed and should plans for use of the property continue as stated in Schedule B of the Declaration of Taking, Rio Grande City anticipates taking the oral deposition of appropriate federal government representatives and other relevant witnesses prior to the end of the discovery period as designated by the Court.

F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports?

Defendant has the burden of proof regarding the issue of just compensation in this action. Subject to additional guidance from the Biden Administration, the United States anticipates being in a position to designate responsive experts within 120 days of the scheduling order in this case. The United States would request a second deadline to allow for rebuttal experts if the United States is ordered to designate experts on the same date as Defendant.

G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report)?

Defendant has the burden of proof regarding the issue of just compensation in this action. Defendant anticipates taking the deposition of any expert designated by the United States by the end of the discovery period as designated by the Court.

H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report)?

The United States anticipates taking the deposition of any expert designated by Defendant by the end of the discovery period as designated by the Court.

I. All other matters raised in Rule 26(f)?

Not applicable.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

None.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

No discovery has been undertaken to date.

13. State the date the planned discovery can reasonably be completed.

In the event discovery is needed, the United States anticipates that discovery can be reasonably completed within 6 months after the entry of the Court's scheduling order.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

Counsel for the United States and Rio Grande City have discussed potential resolutions of this matter in light of the Presidential Proclamation terminating the national emergency at the southern border of the United States and directing "a careful review of all resources appropriated or redirected to construct a southern border wall" through the development of "a plan for the redirection of funds concerning the southern border wall."² The Rio Grande City Commission met on April 14, 2021 to determine whether to seek immediate resolution of this matter or proceed with discovery. Rio Grande City seeks to proceed with discovery and will be requesting revestment of title.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

Prior to filing suit, counsel for the United States and Rio Grande City attempted to negotiate just compensation for the taking. Counsel for both parties will continue to discuss the possibility of resolving this matter prior to the initial pretrial conference.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

The United States does not think alternative dispute resolution is applicable.

17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

The United States does not agree to a trial before a magistrate judge.

18. State whether a jury demand has been made and if it was made on time.

Plaintiff makes no demand for a jury trial.

19. Specify the number of hours it will take to present the evidence in this case.

The evidence in this case could be presented in 12 to 18 hours.

² Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021).

- 20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.**

None.

- 21. List other motions pending.**

None.

- 22. Indicate other matters peculiar to this case, including discovery that deserve the special attention of the court at the conference.**

None.

- 23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for the original and any amendments.**

The United States filed its Disclosure of Interested Parties on December 21, 2020 (Dkt. No. 5).

- 24. List the names, bar numbers, addresses, and telephone numbers of all counsel.**

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CERTIFICATE OF SERVICE

I, N. Joseph Unruh, Assistant United States Attorney for the Southern District of Texas, hereby certify that on April 16, 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

s/ N. Joseph Unruh
N. JOSEPH UNRUH
Assistant United States Attorney